IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 23602 of 2005(I)

PETITIONER:

A. HUSSAIN, AGED 54 YEARS,
S/O. ABDUL KHADER, NADAKKARUVA HOUSE,
(VIA) KANIYAPURAM, THIRUVANANTHAPURAM
(RETIRED HAVELDAR OF CRDF).

BY ADV. SRI.B.HARISH KUMAR

RESPONDENTS:
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1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF
HOME AFFAIRS, NEW DELHI.

2. THE DIRECTOR GENERAL,
CENTRAL RESERVE POLICE FORCE (CRPF),
CGO COMPLEX, NEW DELHI.

3. THE COMMANDANT,
100 BATTALION, CRPF, AHAMEDABAD.

4. THE ADDITIONAL D.I.G.(P),
GROUP CENTER, CRPF, BIJNOUR P.O.,
LUCKNOW, UTTER PRADESH.

BY ADV. SRI.M.L.SURESH KUMAR, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 23602/05

PETITIONER'S EXTS:

EXT.P1: A TRUE COPY OF THE LETTER DT. 3.11.1997 ISSUED TO THE THIRD RESPONDENT

EXT.P2: -DO- OF THE OFFICE ORDER DT. 21.3.1998 ISSUED TO THE THIRD RESPONDENT

EXT.P3: -DO- OF THE OFFICE ORDER DT. 15.12.1998 ISSUED BY THE COMMANDANT 24 BATTALION

EXT.P4: -DO- OF THE REPRESENTATION DT. NIL BEFORE THE 2ND RESPONDENT BY THE PETITIONER

RESPONDENT'S EXTS:

EXT.R1(A) TRUE COPY OF THE ENTRY IN SERVICE BOOK IN THIS REGARD

jj /TRUE COPY/

P.A. TO JUDGE

V. GIRI ,J.

WP(C).NO.23602 of 2005

Dated this the 12th day of November, 2007

JUDGMENT

Petitioner entered service in the Central Reserve Police Force (CRPF) as Constable on 15.1.1972. In 1978, he was promoted to the post of Constable - Driver and posted in the 24 battalion of the CRPF. In 1979, a contingent of CRPF personell struck work between 22.6.1979 to 24.6.1979. It is alleged that the petitioner also participated in that strike. Petitioner was in judicial custody during the period from 25.6.1979 to 30.6.1979. According to the petitioner, he did not participate in the strike. Subsequent thereto the petitioner was promoted as Naik on 1.4.1988 and thereafter as Haveldar on 17.11.1997. Apparently in 1997 after completion of 25 years of service, he applied for promotion to the post of Inspector. The said application was rejected on the premise that the petitioner had participated in the strike from 22.6.1979 to 24.6.1979 and was in judicial custody from 25.6.1979 to 30.6.1979. Respondents took the view that the period between 22.6.1979 to 30.6.1979 will be treated as a break in service. If this be so, it will have the effect of forfeiture of the past services of the petitioner from

15.1.1972 to 21.6.1979. Petitioner retired from service on 31.1.2005. Petitioner received pension, DCRG and commuted value of pension, but this reflects the forfeiture of 7 ½ years of service from 15.1.1972 to 21.6.1979. The said action has been challenged in this writ petition.

2. A perusal of Ext.P1 order would show that the petitioner's Commandant considered the petitioner's case with reference to the break in service between 21.6.1979 to 24.6.1979 and the detention in judicial custody from 25.6.1979 to 30.6.1979. It was decided to treat the same as a break in service. The same was re-iterated in Ext.P2 also. But in Ext.P3, pursuant to a decision taken by the reviewing authority, it is seen that the period from 22.6.1979 to 30.6.1979 is decided to be treated as *'Dies Non' "by giving due weightage and forethought to the case".* But at the same time the reviewing authority did not condone the break in service so as to count his past service from 15.1.1972 to 21.6.1979 towards civil pension. Rule 17A of the Fundamental Rules relating to Central Civil Services provides that in the case of other employees who strike work, in combination or in a concerted manner, the

period of strike shall be deemed to cause an interruption or cause break in the service of the employee, unless otherwise decided by the competent authority. Government of India instructions under Rule 17A which was brought to my notice provides that in the case of an individual employee, unauthorised absence from duty which is not in pursuance of concerted action may be treated as Dies Non. Dies Non does not constitute break in service. But the days treated as Dies Non are not counted as duty for any purposes. Apparently, this distinction has been borne in mind by the competent authority when it issued Ext.P3 deciding to treat the period from 22.6.1979 to 30.6.1979 as Dies Non and if that be so, this does not constitute break in service. But after having observed so the competent authority nevertheless proceeded to hold that the earlier service will be treated as forfeited for the purpose of pension.

3. In my view, in the light of the fact that the competent authority himself has proceeded to treat the period from 22.6.1979 to 30.6.1979 as Dies Non, Government of India's instructions referred to above will apply and consequently the

same period cannot thereafter be treated as break in service. If that be so, the period from 15.1.1972 to 21.6.1979 cannot be treated as forfeited for the purpose of computing the pension payable to the petitioner.

4. Learned standing counsel for the respondent submits as a matter of fact the petitioner was imposed a punishment of a loss of pay and allowances for 10 days and confinement to quarter guard and forfeiture of pay and allowances for a period of 20 days and the petitioner had knowledge of the same even before filing this writ petition. Validity of the punishment imposed on the petitioner is not the subject matter of the petition. I have only considered the deduction of 7 ½ years of service for the total length of service attributable to the petitioner for the purpose of computing pension. In my view since the competent authority has treated the period from 22.6.1979 to 30.6.1979 as Dies Non, then the same period cannot thereafter be treated as a break in service to entail forfeiture of the past services of the petitioner for pension. In the result, it is declared that the petitioner is entitled to pension attributable to the service in the CRPF by counting his service

from 15.1.1972 to 21.6.1979 also as part of the qualifying service. Ext.P3 will stand modified to the said extent. The third respondent is directed to re-compute the pension payable to the petitioner in consequence thereof. Needful shall be done within a period of three months from the date of receipt of a copy of this judgment.

V. GIRI, JUDGE

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